

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TERRANCE JON IRBY,

Plaintiff,

vs.

STATE OF WASHINGTON, BERNIE  
WARNER, DAN PACHOLKE, STEVE  
SINCLAIR, RON KNIGHT, JUAN  
PALOMO, CC3 DAVID MCKINNEY,  
CHRIS BOWMAN, SCOTT FRAKES  
and JERRY T. DUNLEAVY,

Defendants.

No. 4:14-cv-5057-JTR

ORDER ADOPTING REPORT AND  
RECOMMENDATION DENYING  
APPLICATION TO PROCEED *IN*  
*FORMA PAUPERIS*, DISMISSING  
ACTION AND DENYING  
PENDING MOTIONS AS MOOT

BEFORE THE COURT is Plaintiff's Objections, ECF No. 30, to the Report and Recommendation to deny his application to proceed *in forma pauperis*, to dismiss this action, and to deny all pending motions. ECF. No. 29. Plaintiff, a prisoner at Clallam Bay Corrections Center, is proceeding *pro se*. Defendants have not been served.

In his initial complaint, Mr. Irby asserted only interference with his right to access the courts. He sought access to legal materials and to enjoin his transfer from the Washington State Penitentiary to a facility in the Western District of

1 Washington. He has since been transferred. Plaintiff did not assert any health  
2 concerns in his initial complaint, let alone sufficiently allege that he was “under  
3 imminent danger of serious physical injury.”  
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5 Because Mr. Irby has filed more than three prior actions or appeals which  
6 were dismissed as frivolous or for failure to state a claim,<sup>1</sup> he is precluded from  
7 proceeding *in forma pauperis* in this action, absent a showing of “imminent danger  
8 of serious physical injury.” 28 U.S.C. § 1915(g). Plaintiff subsequently presented  
9 a myriad of documents asserting various health issues and injuries he sustained  
10 when medication was withdrawn after he had already filed this action. Medical  
11 issues arising more than two weeks after a complaint is mailed, fail to demonstrate  
12 that the inmate was under “imminent danger of serious physical injury,” at the time  
13 he filed his complaint. *See Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir.  
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19 <sup>1</sup> Western District: *Irby v. O’Neill et al.*, 2:13-cv-00197-JLR, dismissed with  
20 instruction to “count as a ‘strike’ pursuant to 28 U.S.C. § 1915(g)” on March 11,  
21 2013, appeal deemed frivolous, 13-35258, and Mandate issued August 2, 2013.  
22 Eastern District: **Error! Main Document Only.** *Irby v. Munden et al.*, 2:08-cv-  
23 5078-EFS, dismissed for failure to state a claim upon which relief may be granted  
24 on March 25, 2009, affirmed on appeal, 09-35296, and Mandate issued October 14,  
25 2009; *Irby v. Sinclair, et al.*, 2:10-cv-05053-LRS, dismissed for failure to state a  
26 claim upon which relief may be granted on September 29, 2010 , affirmed on  
27 appeal, 10-35959, and Mandate issued October 14, 2009.  
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1 2007) (“[T]he availability of the exception turns on the conditions a prisoner faced  
2 at the time the complaint was filed, not at some earlier or later time.”).

3 The Court has liberally reviewed Plaintiff’s submitted materials, including  
4 his Objections asserting that the Report and Recommendation is “moot of any legal  
5 standard.” The Court finds no merit to the asserted objections. For the reasons set  
6 forth above and by Magistrate Judge Rodgers, **IT IS ORDERED** that the Report  
7 and Recommendation, ECF No. 29, is **ADOPTED in its entirety** and the  
8 application to proceed *in forma pauperis* is **DENIED** as precluded under 28 U.S.C.  
9 § 1915(g).  
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12 Although granted the opportunity to do so, Plaintiff did not pay the \$400.00  
13 filing fee for this action. Therefore, **IT IS ORDERED** the Complaint is  
14 **DISMISSED** for failure to comply with the filing fee requirements of 28 U.S.C. §  
15 1914. There is no reason to entertain this action further. Therefore, **IT IS**  
16 **ORDERED** that all pending motions are **DENIED as moot**.  
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19 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
20 Order, enter judgment, forward a copy to Plaintiff and **close the file**. The Court  
21 certifies any appeal of this dismissal would not be taken in good faith.  
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24 **DATED** this 22nd day of August 2014.  
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26  
27 s/ Rosanna Malouf Peterson  
28 ROSANNA MALOUF PETERSON  
Chief United States District Court Judge

ORDER ADOPTING REPORT AND RECOMMENDATION -- 3